Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use (the Notice), issued pursuant to section 49;
- an order to dispute a rental increase, pursuant to section 43; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants JO and LE and landlords JT (the landlord) and NT attended the hearing. Tenants JO and LE were assisted by agent JE (the tenant). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

I note that section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is

dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to any of the tenants' other claims to warrant that they be heard together.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

Issues to be Decided

Are the tenants entitled to:

1. cancellation of the Notice?
2. an authorization to recover the filing fee?

If the tenants' application is dismissed, are the landlords entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlords' obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started in 2020. Monthly rent is $1,200.00, due on the first day of the month. The landlords collected and hold in trust the $600.00 security deposit.

Both parties agreed the landlord purchased the rental unit in September 2021, the parties do not have a signed tenancy agreement and monthly rent includes the utilities and the right to use laundry one day per week.

Both parties agreed the landlord attached the Notice to the tenants' door and the tenants received it on July 17, 2022. A copy of the July 17, 2022 Notice was submitted into evidence. It states: "the rental unit will be occupied by the landlord or the landlord's close family – the father or mother of the landlord or landlord's spouse". The effective day is September 30, 2022.

The tenants submitted the application on July 24, 2022 and continue to occupy the rental unit.

The notice of hearing states:

> We believe that the Landlord is not acting in good faith and appears to have an ulterior motive when the notice to end tenancy was served. The notice posted on the front door of the rental unit on July 17th however the day before that, July 16th, the landlord emailed a new tenancy agreement to the tenants for review. On the morning of July 17th, the tenant phoned the landlord to clarify items on the proposed new tenancy agreement and will not be able to sign the agreement as proposed.

The landlord affirmed that the owners of the rental unit are the landlord, his wife NT and VT, each co-owing 33.3% of the rental unit. The landlord stated that his parents AT and JA will move to the rental unit.

The landlord testified that his parents currently live with him and that landlord NT's brother HT lives across from the rental unit. HT's partner is expecting a baby due in December 2022 and the landlords' parents plan to move to the rental unit, as they will assist with the baby.

The landlord submitted a statement from HT dated October 29, 2022:

> I, [HT] would like to verify our need for my inlaws [AT and JA] to move into my brotherinlaw [the landlords] basement suit located at [rental unit's address] which is located across the street from my house [redacted for privacy] to help with my two year old and newborn which I am expecting to be end of Dec 2022. The delay in their move has caused our family stress and we are hoping they can move in asap to settle in the basement and be available to help me with our children

The landlord submitted a statement from AT dated October 29, 2022:

> I, AT, would like to confirm that my wife and myself will need to move into my son [JT] and daughter in law [NT]'s basement suite located at [rental unit's address] in order to help my other son and daughter inlaw who live across the street at [redacted for privacy] with their two year old and newborn which will be due towards the end of December 2023. We need to move in as soon as possible to prepare.

The landlord said, answering my question, that there is no ulterior reason to serve the Notice and that there were no rental issues with the tenants during the tenancy.

The tenant affirmed he does not believe the landlord is acting in good faith. The landlord asked to increase monthly rent to $1,400.00 in June 2022. The parties texted on July 4, 2022:

> Tenant: We called the residential tenancy branch and was informed that the 1.5% maximum rent increase and 3 months notice before the increase still applied even when the property is sold to new owners. Also, there's a rent increase form that is required to be filled out by landlord and given to tenants.
> Landlord: Yes we understand. Im out of town until the 14th. I will be coming with a contract to sign monthly. From August 1st there will be a fee to use the laundry machine – $80/month or you can choose to do it outside and 25% fee for hydro and gas. We will show you the bill monthly. Thank you.

The landlord emailed a tenancy agreement to the tenants on July 16, 2022. It states:

> 10. Subject to the provisions of this Lease, the rent for the Property is $1,250.00 per month (the "Rent").
> 22. The Tenant is responsible for the payment of the following utilities and other charges in relation to the Property: electricity, water/sewer, natural gas and garbage collection.
> 23. The Tenant is also responsible for the following utilities and charges: WASHING MACHINE 75.00 per month and 25% of all other expenses.
> 32. LAUNDRY ONCE A WEEK.

The landlord stated he was not aware of the requirements for a rent increase in BC when he emailed the tenancy agreement on July 16, 2022. The landlord testified that he

suggested the $75.00 fee to use the laundry because the tenants wanted to use the laundry two days per week.

The tenant said that on July 17, 2022 he informed the landlord that he does not agree with the tenancy agreement emailed the day before and on July 17, 2022 the landlord served the Notice.

The landlord affirmed he informed the tenants in July 2022 that HT's partner will have a baby in December 2022 and that he only learned in July 2022 about the pregnancy.

The landlord stated that the family had a meeting on July 17, 2022 and concluded that it would be better for the landlord's parents to move to the rental unit to assist with the baby.

The tenant testified that they were not aware of the baby until the day the Notice was served and that the landlord informed them that rent in the amount of $1,400.00 is below the market rate.

The landlord said he informed the tenants in June 2022 that HT's partner will have a baby and that he did not say that rent in the amount of $1,400.00 is below the market rate.

Analysis

Section 49(8)(a) allows the tenant to dispute a 2 month Notice within 15 days after the date the tenant received it. As the tenants confirmed receipt of the Notice on July 17, 2022 and submitted this application on July 24, 2022, I find the tenants disputed the Notice within the timeframe of section 49(8)(a) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that the Notice to end tenancy is valid.

RTB Policy Guideline 2A states that when issuing a notice under section 49 of the Act the landlord must demonstrate there is not an ulterior motive for ending the tenancy:

> Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

In Gallupe v. Birch, 1998 CanLII 1339, the British Columbia Supreme Court states:

> [35] I conclude from the observations of Taylor J.A. and Melvin J. that a consideration of dishonest motive or purpose is a matter that should be undertaken in a consideration of the good faith of a landlord in serving an eviction notice under s. 38(3). When the question of good faith is put in issue by a tenant, the arbitrator (or panel, if on a review) should consider whether there existed a fundamentally dishonest motive or purpose that could affect the honesty of the landlord's intention to occupy the premises. In such circumstances, the good faith of a landlord may be impugned by that dishonest motive or purpose.

I accept both parties uncontested testimony that monthly rent in the amount of $1,200.00 includes the utilities and the right to use the laundry one day per week.

Based on the tenancy agreement submitted into evidence, I find the landlords asked the tenants to accept a rent increase to $1,250.00, plus 25% of the utilities bills and $75.00 to use the laundry one day per week.

The landlord testified that he suggested the $75.00 fee to use the laundry because the tenants wanted to use the laundry two days per week. However, clause 12 of the tenancy agreement indicates the landlord asked the tenants to pay $75.00 to use the laundry one day per week.

I accept the uncontested testimony that on the same day that the tenants informed the landlords that they do not agree with the rent increase the landlords served the Notice.

The landlord did not explain the issues related to the rent increase until after the tenant raised these issues during the hearing, although the notice of hearing indicates that the tenants believe the landlords issued the Notice with ulterior motive because of the proposed rent increase.

I asked the landlords if they had any witnesses, and the landlords did not call witnesses.

The landlord submitted statements from HT and AT, but they did not attend the hearing to provide testimony and be cross-examined. I find that having a witness attend the hearing to provide testimony in this dispute is important because the tenants challenged the motives of the Notice.

I find the landlord's testimony was not convincing. The landlord affirmed that he learned that HT's partner is expecting a baby in July 2022, and later he stated he learned about the pregnancy in June 2022.

Furthermore, I find that the landlord's testimony about his family concluding that the landlord's parents should move to the rental unit on the same day that the tenants informed them that they do not agree to the rent increase is not convincing.

Based on the above, I find that the landlords have not met the onus to prove, on a balance of probabilities, that their parents intend, in good faith, to occupy the rental unit. I find the Notice was issued with ulterior motives.

Accordingly, I cancel the Notice. This tenancy will continue until it is lawfully ended in accordance with the Act.

As the tenants are successful with their application, pursuant to section 72 of the Act, I authorize them to recover the $100.00 filing fee. I order that this amount may be deducted from a future rent payment.

Conclusion

The Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a) the tenants are authorized to deduct $100.00 from their rent payment for January 2023 to recover their filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 19, 2022

Residential Tenancy Branch